

Memorandum

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OFFICE OF THE SECRETARY
FEDERAL MARITIME COMM

TO : Bryant L. VanBrakle

DATE: January 14, 2004

FROM : A. Paul Anderson, Commissioner *PA*

SUBJECT : Meeting Regarding Comments of the World Shipping Council in the Matter of the Petitions of United Parcel Service, Inc. (P3-03), National Customs Brokers and Forwarders Association of America, Inc. (P5-03), Ocean World Lines (P7-03), BAX Global, Inc. (P8-03) and C.H. Robinson Worldwide, Inc. (P9-03).

On January 14, 2004, I met in my office with Christopher L. Koch, President & CEO of World Shipping Council, and Stanley O. Sher, Counsel with Sher & Blackwell, at their request to hear their views on the issue of granting non-vessel-operating common carriers (NVOCCs) contract authority. My counsel, Lucille A. Streeter, was also present.

Mr. Koch stated that the petitions filed in connection with the issue of granting NVOCCs contract authority, present a confused picture due to the differences in difficulties and solutions described by the different petitioners. He stated that the FMC needs to provide clarity by structuring a proceeding that will provide guidance to the parties involved. He also stated that the Commission needs a record upon which to base a decision, and the current record lacks evidence of how NVOCCs are actually doing business. He stated that the Commission could proceed by instituting a fact finding or issuing a notice of inquiry.

Mr. Sher stated that the carrier industry believes that the NVOCCs request for contract authority would constitute a major change in the regulatory scheme set up in the Shipping Act, given the large numbers of NVOCCs asking to be exempted from major portions of the Act's requirements. Mr. Koch stated that UPS has the ability to purchase the assets it would need to gain contract authority as vessel-operating common carrier (VOCC). Mr. Sher argued that there is great diversity in the NVOCC industry as to the nature of the problem at issue, and few facts have been presented as to how the NVOCCs operate and what their injury is. He stated that the FMC needs to focus on how the NVOCCs operate and identify the commercial issue involved in the petitions.

Once the commercial issue is identified, Mr. Sher stated that a solution may suggest itself.

Mr. Koch stated that if NVOCCs were granted contract authority, they would be in a preferred position vis-a-vis VOCCs, e.g., with regard to tariff filing. Mr. Sher stated that with contract authority, the large NVOCCs would have a great deal of market power vis-a-vis VOCCs and would force rates down. I concluded the meeting by thanking them and stating that the Commission looks forward to addressing the issues presented in the petitions.